

CHAPTER 4.0 SECTION 4(F) EVALUATION

Section 4(f) of the Department of Transportation Act provides protection to publicly owned parks and recreational areas, wildlife and waterfowl refuges, and historic sites on or eligible for inclusion onto the National Register of Historic Places (NRHP). Specifically, Section 4(f) states:

“The Secretary [of Transportation] may approve a transportation program or project...requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if:

- There is no prudent and feasible alternative to using that land; and
- The program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use [49 USC 303(c)].”

This section discusses the resources within the US-93 Project corridor that may qualify for protection under Section 4(f) as defined in 23 CFR 771.135.

4.1 BUILD ALTERNATIVE¹/PROJECT PURPOSE AND NEED

The purpose of this Project as described in Chapter 1 of the Environmental Assessment (EA) is to:

- Increase US-93 roadway capacity to accommodate existing and future year 2030 vehicle traffic; and
- Increase transportation safety for all users.

Improvements to US-93 Project corridor are needed based on the following factors:

- Predicted 2030 peak hour traffic demand exceeds available transportation capacity;
- The US-93 Project corridor is a designated Commercial Overlay Zone (COZ) and the existing two lane facility will not accommodate the operations associated with future development;
- US-93 needs to be designed to provide a safe transportation facility for farm operations and residents until these properties develop as commercial facilities; and
- The Project corridor does not meet community needs to accommodate a bicycle and pedestrian facility.

4.2 IDENTIFICATION OF SECTION 4(F) RESOURCES

Section 4(f) protection applies to publicly owned parks and recreational areas, public waterfowl and wildlife refuges, and historic properties on or eligible for inclusion onto the NRHP. There are no publicly owned recreational areas (KOA Campground and the 93 Golf

¹ The term *Build Alternative* is used throughout this section instead of *Proposed Action*.

Ranch are privately owned) nor are there any waterfowl or wildlife refuges within the US-93 Project corridor.

Section 4(f) applies to historic properties that are on or eligible for inclusion onto the NRHP. To identify historic resources along the corridor, two cultural resource inventories were conducted. The first cultural resources report was prepared in 2001 by Shaprio and Associates². The second report is an addendum to the original report. The addendum cultural resources report provides additional information regarding eligibility for historic resources in the area. Specifically, it responded to the Idaho State Historic Preservation Office's (SHPO) request for clarification, report new information about the cultural resources in the Area of Potential Effect (APE), and to address the impacts to cultural resource from the revised Project alignment. The addendum report has been reviewed and approved by the Idaho SHPO (see letter in Appendix C).

36 CFR 800 defines the term historic property as "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. The term eligible for inclusion in the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria". The term historic property is used throughout this Section 4(f) Evaluation.

4.2.1 Determination of Eligibility

A historic or archaeological resource that is eligible for the NRHP has at least one of the qualities described below:

- Resource associated with events that have made a significant contribution to the broad patterns of our history;
- Resource associated with the lives of persons significant in our past;
- Resource that embodies the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; and
- Resource that has yielded or may be likely to yield, information important in prehistory or history.

A total of 17 historic resources were identified along the Project corridor and are listed in Table 4-1 (found on the following page). Of these, eight are not eligible for inclusion onto the NRHP; the other nine are eligible or have already been included onto the NRHP. Figure 3-4 of the previous chapter shows the location of the eligible cultural resources along the corridor. Each of the historic properties is shown in Table 4-1, found on the following page, with their eligibility rating and criteria.

² US-93: Petro II to SH-25 Jerome County, Idaho, Archaeological and Historical Survey Report, Archaeological Survey of Idaho

TABLE 4-1. SUMMARY OF CULTURAL RESOURCES IN THE PROJECT AREA

Name of Site	NRHP Eligibility	NRHP Criteria	Location
K Coulee Canal	Eligible	Criterion A	Crosses US-93 at MP 54.7.
Lickley Farm	Not Eligible		Moved to the IFARM near I-84, off the of the US-93 corridor.
Lickley Tenant House	Not Eligible		MP 54.4, east side of US-93.
House (53-17011/CR-4)	Not Eligible		MP 54.9, west side of US-93.
Wild Rose Ranch	Eligible	Criteria A and C	Adjacent to US-93 east side at MP 55.5.
House	Not Eligible		MP 55.9, west side of US-93, adjacent to the railroad tracks.
Oregon Short Line Railroad (known as the Eastern Idaho Railroad)	Eligible	Criterion A	Crosses Project at MP 55.9.
Mountain View Ranch	Eligible	Criteria A, B, & C	Adjacent to US-93 on west side at MP 56.0.
Jacob B. Van Wagener Barn	Listed on NRHP	Criteria A and C	Adjacent to US-93 on west side at MP 56.1.
Jacob B. Van Wagener Caretaker's House	Listed on NRHP	Criterion C	Adjacent to US-93 on west side at MP 56.1.
L Canal	Eligible	Criterion A	Crosses under US-93 at MP 56.5.
L Canal Bridge #1	Not Eligible		Located at MP 56.5.
House and shed	Not Eligible		MP 56.6, west side of US-93
North Side Canal Water Master's House	Eligible	Criteria A, B, & C	Adjacent to US-93 east side at MP 56.7.
D5 Ditch	Eligible	Criterion A	Crosses US-93 at MP 57.0.
Trash scatter	Not Eligible		Not available
Isolate find	Not Eligible		Not available

Table is from the Addendum Cultural Resources Report

For a complete description of each eligible site see Section 3.7 of Chapter 3.0.

4.3 ANALYSIS OF IMPACTS TO SECTION 4(F) RESOURCES

This section evaluates the impacts, if any, associated with the Build Alternative to each of the Section 4(f) resources discussed above. This analysis concludes whether or Section 4(f) use or impact would occur at each site. As shown in Table 4-1, nine eligible historic resources are located within the US-93 Project study area. There are no publicly owned recreational areas or wildlife refuges within the Project corridor.

4.3.1 Definition and Determination of Section 4(f) 'Use'

The term 'use' of a Section 4(f) resource means that an alternative will result in an impact to, or occupancy of, a Section 4(f) resource. Impacts or use can be interpreted as either direct or indirect (called constructive use for Section 4(f)). 23 CFR 771.135(f) defines use as:

- When land is permanently incorporated into a transportation facility; or
- When there is a temporary occupancy of land this is adverse in terms of the statute's preservationist purposes as determined by the criteria in paragraph (p)(7) of this section.

The impacts to historic resources resulting from the Build Alternative are categorized by criteria established by Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations (36 CFR 800). These include No Effect, No Adverse Effect, or Adverse Effect. The types of impacts from the Build Alternative were determined by the Federal Highway Administration (FHWA) and the Idaho Transportation Department (ITD) and approved by the Idaho SHPO. The definitions are as follows:

- No Effect is defined as no historic properties present or there are historic properties present but the undertaking would have no effect upon them as defined in 36 CFR 800.16(i);
- No Adverse Effect is defined in 36 CFR 800 as "when the undertaking's effects do not meet the criteria of 36 CFR 800.5(a)(1) 'Adverse Effect' or the undertaking is modified or conditions are imposed to avoid adverse effects." The Build Alternative results in a No Adverse Effect when the impacts to a historic property are minimal but do not completely alter the historic characteristics that qualify it for eligibility onto the NRHP; and
- Adverse Effect includes when the undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register (36 CFR 800.5(a)).

The Build Alternative has been designed to avoid five historical resources as shown in the preliminary design figures found in Appendix B. These properties are not impacted (No Effect) by the Build Alternative and include:

- Wild Rose Ranch;
- Mountain View Ranch;
- Jacob B. Van Wagenor Barn (part of the Mountain View Ranch);
- Jacob B. Van Wagenor Caretaker's House; and
- North Side Canal Water Masters House.

The Section 4(f) resources impacted by the Build Alternative are listed below and each will be a No Adverse Effect as determined by the Section 106 process. All of the historic resources impacted by the Build Alternative are linear features that extend beyond and outside the Project study area. The impacts to these historic properties are minimal in

comparison to the overall length of each. In addition, the Build Alternative will not substantially alter the historic characteristics that qualify them as eligible to the NRHP.

4.3.1.1 K Coulee Canal

The Build Alternative includes widening US-93 to the east at this location to avoid impacting the commercial businesses on the west side of the highway. Approximately 150 additional feet of the canal will be placed in a culvert. In whole, the Build Alternative will not alter the historical qualities of the K Coulee Canal that make it eligible for inclusion onto the NRHP. The Build Alternative results in a No Adverse Effect determination.

4.3.1.2 Oregon Short Line Railroad

The Build Alternative shifts US-93 to the east at the railroad crossing to avoid the businesses, Mountain View Ranch (Van Wagenor Barn), and residences on the west side of the highway. The proposed Project will result in a No Adverse Effect determination. The US-93 roadway will be 86 feet wide at the new crossing; it is currently 30 feet wide. The Build Alternative will not alter the historical qualities that make the Oregon Short Line Railroad eligible for the NRHP.

4.3.1.3 L Canal

Within the Project area, irrigation laterals that divert from the L Canal include the L4 Lateral, L3 Lateral, and L2 Lateral. The Build Alternative does not diminish the qualities that make the L Canal eligible for the NRHP. The impacts to the canal and each of its laterals are discussed.

- L Canal – Build alternative will shift US-93 to the west to avoid impacts to the North Side Canal Water Masters House. Approximately 550 feet of the canal will be realigned on the west side of US-93 and about 80 feet on the east side. The access roads (located on both sides of the canal) will also have to be realigned as part of the build alternative.
- L4 Lateral – A 500 foot section of this lateral parallels on the west side of US-93 which will have to be relocated due to the widening of the highway.
- L3 Lateral – A 400 foot long section of this lateral parallels US-93 on the west side of the highway. This segment will be relocated further west.
- L2 Lateral – No impacts to this canal; the build alternative does not cross it.

4.3.1.4 D5 Ditch

The Build Alternative will shift US-93 to the west at this location and will require that 300 feet of this ditch be relocated and placed in a culvert. The Build Alternative does not alter the qualities of the D5 Ditch that make it eligible for the NRHP.

4.4 DE MINIMIS DETERMINATION

Congress recently amended Section 4(f) when they enacted the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (Public Law 109-59, enacted August 10, 2005) (“SAFETEA-LU”). Section 6009(a) of SAFETEA-LU added a new subsection to Section 4(f), which authorizes the FHWA to approve projects that use a Section 4(f) resource that are part of a historic property without analysis of feasible and prudent avoidance alternatives. However, FHWA must make a finding that such uses would have *de minimis* impacts upon the Section 4(f) resource, with the concurrence of the relevant SHPO (see signed ITD form 1502 in Appendix D). A finding of *de minimis* impact

can be made if FHWA, in consultation with the SHPO, has made a “*No Adverse Effect*” determination for the resource under Section 106 of the NHPA. With regard to historic Section 4(f) resources, Section 6009 of SAFETEA-LU adds the following language to Section 4(f):³

4.4.1 De Minimis Impacts

4.4.1.1 Requirements

The requirements of this section will be considered satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a *de minimis* impact on the area. In making any determination under this subsection, the Secretary will consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

4.4.1.2 Historic Sites

With respect to historic sites, the Secretary may make a finding of *de minimis* impact only if the Secretary has determined, in accordance with the consultation process required under Section 106 of the NHPA (16 U.S.C. 470f) that:

- The transportation program or project will have No Adverse Effect on the historic site; or
- There will be no historic properties affected by the transportation program or project;
- The finding of the Secretary has received written concurrence from the applicable State Historic Preservation Officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process);
- The finding of the Secretary has been developed in consultation with parties consulting as part of the process referred to in subparagraph (A); and
- A “No Adverse Effect” determination, as part of the Section 106 process, is anticipated for all the impacted historic resource for this Project. FHWA will request that the SHPO concurs with the finding of No Adverse Effect to historic properties (see letter in Appendix C). This will qualify the historic resources for the “*de minimis*” exemption to the avoidance analysis as required by Section 4(f). Accordingly, this Section 4(f) Evaluation does not contain an analysis of avoidance alternatives.

The finding of “No Adverse Effect” concludes that the impacts resulting from the Build Alternative for the K Coulee Canal, Oregon Short Line Railroad, L Canal, and D5 Ditch, will not “alter, directly or indirectly, any of the characteristics of [the] historic property(s) that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.”⁴ Based on those findings, and taking into consideration the harm minimization and mitigation measures that have been incorporated into the Build Alternative as documented in this Section 4(f) Evaluation, it is the conclusion of FHWA that the Build Alternative will have *de minimis* impact on the historic resources listed above. Therefore, an analysis of feasible and prudent avoidance alternatives under Section 4(f) is not required.

³ This provision will be codified as 23 U.S.C. § 138(b). Section 6009(a)(2) of SAFETEA-LU adds identical language at 49 U.S.C. § 303(d).

⁴ See 36 CFR § 805(a)(1)

SHPO has agreed to the finding of *de minimis* (see Appendix D – ITD form 1502 signed by SHPO).

4.5 MEASURES TO MINIMIZE HARM

Minimizing impacts to all the Section 4(f) resources were considered throughout the development of the Build Alternative. The Build Alternative (shown in Appendix B) minimizes harm to Section 4(f) resources along the US-93 corridor. This alternative was selected in part because it completely avoids impacting the Wild Rose Ranch, Mountain View Ranch and Van Wagener Barn, Van Wagener Caretakers House and Cistern, and the North Side Canal Water Masters House. The Build Alternative includes shifting the alignment west to avoid impacting the Wild Rose Ranch, Mountain View Ranch and Van Wagener Barn (listed on the NRHP), and the Van Wagener Caretakers House (listed on the NRHP) and shifted east to avoid impacting the North Side Canal Water Master's House.

The Section 4(f) resources impacted by the Build Alternative are linear features that traverse beyond the Project study area. To minimize harm to these linear historic resources the Build Alternative will use the minimal cross section at each location. Vertical headwalls will be used at the K Coulee Canal, Oregon Short Line Railroad, L Canal, and the D5 Ditch to minimize the impacts. The vertical headwalls will minimize the linear length of canal or ditch needed for this transportation Project. The canal slopes and channel configuration will be restored to their original shape as part of the construction.

4.6 MITIGATION

The Section 4(f) resources impacted by the Build Alternative are linear irrigation canals or ditches and the Oregon Short Line Railroad. The canals and ditches are owned, operated and maintained by the North Side Canal Company; the Oregon Short Line Railroad is owned, operated, and maintained by the Eastern Idaho Railroad. ITD will continue to coordinate with these companies.

4.7 COORDINATION

As discussed, two cultural resource inventories were conducted along the Project corridor. The canals are owned and maintained by the North Side Canal Company based out of Jerome. Coordination efforts have included the canal company. In addition, the canal company and the Eastern Idaho Railroad (owners and operators of the Oregon Short Line Railroad) will be coordinated with during the final design and construction of this Project.

4.8 SUMMARY

- The Build Alternative will use a segment of the K Coulee Canal, Oregon Short Line Railroad, L Canal, and the D5 Ditch. ITD through FHWA has determined that the impacts result in a “No Adverse Effect” for purposes of Section 106 of the NHPA with SHPO concurrence (see letter in Appendix C);
- The Build Alternative will have a *de minimis* impact on the resources listed above and that an avoidance analysis under SAFETEA-LU is not required as part of this Section 4(f) Evaluation;

- Although the use of the K Coulee Canal, Oregon Short Line Railroad, L Canal, and the D5 Ditch cannot be completely avoided, the Build Alternative considered measures to minimize harm to these resources;
- There are no additional ways to further minimize Section 4(f) impacts by additional measures to minimize harm; and
- ITD will continue to coordinate with the North Side Canal company and the Eastern Idaho Railroad. There are no adverse impacts to Section 4(f) resources, and therefore, no mitigation is required.

4.9 DETERMINATION

The Build Alternative will have *de minimis* impacts on the K Coulee Canal, Oregon Short Line Railroad, L Canal, and the D5 Ditch and avoidance is therefore not required. The Build Alternative includes all possible planning to minimize harm to these resources resulting from such use.